

Tribunal Order # 3.

Wednesday, 15 May, 1946

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Chambers of the Tribunal
War Ministry Building
Tokyo, Japan

PROCEEDINGS IN CHAMBERS

On An Application For
Bill of Particulars
On Behalf Of All The Accused

- - -

Before:

HON. SIR WILLIAM WEBB, President of the
Tribunal and Member from the
Commonwealth of Australia.

Appearances:

For the Prosecution Section:

Mr. A. S. Comyns Carr, Associate Counsel,
acting on behalf of the United Kingdom of
Great Britain and Northern Ireland;

A. J. Mansfield, Justice, Associate Counsel,
acting on behalf of the Commonwealth of
Australia;

H. G. Nolan, Brigadier, Associate Counsel,
acting on behalf of Canada;

Mr. Frank Tavenner, Jr., Associate Prosecutor.

For the Defense Section:

Beverly M. Coleman, Captain, USNR, Chief of
Counsel;

Ben Bruce Blakeney, Major, AUS, AC, Counsel
for the accused UMEZU, Yoshijiro;

Samuel J. Kleiman, Captain, AUS, AC, and
USAMI, Rukuro, Counsel for the accused
HIRANUMA, Kiichiro;

George A. Furness, Captain, AUS, AC, Counsel
for the accused SHIGEMITSU, Mamoru and
MUTO, Akira;

Mr. George Yamaoka, Counsel for the accused
TOGO, Shigenori; and

KIYOSE, Ichiro, Counsel for the accused
TOJO, Hideki.

For the Office of the General Secretary, IMTFE:

Vern Walbridge, Colonel, CAC,
General Secretary;

G. W. Hanley, Lieutenant Colonel, AC,
Executive Officer;

Edward H. Dell, Judge,
Legal Adviser to the Secretariat.

The proceedings were begun at 1430.

THE PRESIDENT: You are not asking further particulars on the preamble, are you?

CAPTAIN KLEIMAN: Well, there is a bit of difficulty with the preamble, sir, inasmuch as there is a statement that these defendants entered into a conspiracy, and apparently the preamble goes through every count of the Indictment.

MR. COMYNS CARR: Before we go into that, sir, might I draw your attention to this: This motion is only filed on behalf of, as I understand now, by amendment, five defendants. The Tribunal has dealt with other motions filed on behalf of some defendants and not others.

The prosecution is very anxious to know whether, although they are only filed on behalf of these defendants, all the defendants are represented here today, because we consider it impossible as a matter of practice to deal with an application for particulars on the part of certain defendants if it is to be left open whether other defendants are to be allowed to come in at some unspecified time and ask for the same or other particulars.

What we would ask you to do is to fix a time limit for the filing of all preliminary motions and to

adjourn the hearing of this one until we know whether all the defendants are behind this and whether this is the sole motion for particulars or whether there are going to be a number of different motions for particulars, so that the whole matter can be dealt with at one time.

Of course, if the defense counsel are able to tell us today that, in fact, they represent all the defendants and that this is the only application for particulars that is being filed, then we should have no objection to its being dealt with at once. But we do feel that it would be an inconvenience to the Court as well as to the prosecution if there is to be a series of these things and the matter cannot be disposed of at one time.

THE PRESIDENT: I notice Captain Coleman is here. He represents all the accused.

CAPTAIN COLEMAN: It was my understanding that this committee view the Indictment on the point of view of the entire panel of defendants.

Is that correct, Captain Kleiman?

CAPTAIN KLEIMAN: I do not think we can answer for all the defendants. However, Dr. KIYOSE may be able to help us out in that respect.

It is our purpose as well, sir -- we had the

date of June 3 set for the taking of evidence, and we felt that we had to make certain preliminary motions in order to prepare for the taking of evidence.

MR. USAMI: All the defense counsel who were present in the courtroom today wanted to join in this motion. We had a gathering in our common room and discussed the matter Saturday, but we had no time to sign up the motion presented by Captain Kleiman.

THE PRESIDENT: Well, all those were present in Court today, including all the defense counsel, I take it? They were all there, were they?

MR. USAMI: Pardon?

THE PRESIDENT: All the defense counsel were there? There may have been absentees, for all I know.

CAPTAIN COLEMAN: Yes.

MR. USAMI: All the counsel were there.

THE PRESIDENT: Yes. Well, am I to treat this as an application by all the accused?

MR. USAMI: Yes.

THE PRESIDENT: Would you say that in their behalf?

CAPTAIN COLEMAN: Yes, it was the desire of all of the Japanese counsel to be made parties to this application.

THE PRESIDENT: Yes. I direct they be made

parties.

MR. COMYNS CARR: Then, may we take it that when you have disposed of this in whatever manner you see fit, no further motion for particulars will be entertained?

THE PRESIDENT: Well, that would be my understanding, but I do not know what they think.

CAPTAIN KIEIMAN: It would be satisfactory to us, but I am worried about how the American counsel who are coming on and will represent individual defendants will feel about our decision here.

THE PRESIDENT: I think I had better grant you an adjournment to consider your position in view of this alteration to include all the accused. I do not think you are now in a position to tell me just what you want.

CAPTAIN KIEIMAN: We know what we want, sir, but I do not know that I can answer.

THE PRESIDENT: Are you all agreed upon what you want? You are not sure?

CAPTAIN COLEMAN: Under the circumstances, it might appear advisable to arrange a meeting of all Japanese defense counsel tomorrow morning.

CAPTAIN FURNESS: I would suggest that, since the American counsel are arriving momentarily, we delay until they come, until they have time to look at these

motions and things we have done. I do not think we should now commit them when they have never seen any of these papers.

THE PRESIDENT: Well, is it a matter of real urgency, Captain Kleiman?

CAPTAIN KLEIMAN: If we are to be prepared for trial on June 3 -- we have other motions in mind; some of us desire to make a motion for severance. I particularly desire that; and, without a bill of particulars, I do not know how to make my application for severance because I do not know how the defendants here enumerated are involved in all these events listed in the Indictment, the counts and the appendices. That is my particular problem and the problem of two other American counsel that are now here, sir.

THE PRESIDENT: Yes.

MR. COMYNS CARR: Well, sir, I would respectfully ask you to fix a final date by which all motions should be filed because otherwise I can see this procedure of motions on behalf of particular defendants not only occupying the whole intervening time between today and June 3, but even overlapping that date; and, in our view, that would be a disastrous state of affairs.

THE PRESIDENT: But it is agreed that there be only one application for further and better

particulars; that much is agreed upon. What other motions you have in mind apart from that for severance, I do not know.

CAPTAIN FURNESS: I do not suppose we know either unless these other counsel arrive.

THE PRESIDENT: Would it be practicable for me to fix a date for all preliminary motions, Mr. Carr?

MR. COMYNS CARR: In my submission, sir, yes, the last date for filing of motions, and also a period between that date and the hearing of them -- not a long one, but enough to enable us to prepare our answer to it in a considered form.

You probably have observed, sir, the difficulties which have arisen and which have to some extent delayed the court procedure owing to the fact that, with regard to the first motion that was filed, through some misunderstanding it did not reach us until a considerable time after we understand it had been filed; and, in others, there was no interval at all in which we could prepare, and the result was it was not possible in most instances to get our answers into a form in which they could be quickly translated.

THE PRESIDENT: I could really safely fix a

time for the filing of all preliminary motions because if the time fixed is not sufficient, it could be extended.

MR. COMYNS CARR: Yes.

THE PRESIDENT: It would really only be notice to these people to be ready by a certain date.

MR. COMYNS CARR: That would be our suggestion, sir.

THE PRESIDENT: Of course, it should not be assumed that that date could be readily extended; I do not want that impression to be given.

MR. COMYNS CARR: I hope you would require very good cause for extending it.

THE PRESIDENT: In representing all the accused, Captain Coleman, what do you think?

CAPTAIN COLEMAN: I do not think we can expect the American counsel en route from the States before next Monday. Some might possibly arrive Friday night or Saturday or Sunday, but then it would require a day to become billeted, and I would not expect to have them available in the office any earlier than Monday.

THE PRESIDENT: Well, I could safely fix a week.

CAPTAIN COLEMAN: There may be delays to that. If we had a time thereafter which would give them an

opportunity to familiarize themselves with the cases --

THE PRESIDENT: I could give them until Friday, this day a week.

MR. JUSTICE MANSFIELD: Next Friday a week. Today is Wednesday.

THE PRESIDENT: Yes, I mean next Friday.

CAPTAIN COLEMAN: Yes. That would be the 25th.

THE PRESIDENT: I will fix that date to Friday, the 25th of May, for the filing of preliminary motions.

MR. COMYNS CARR: And I might point out, sir, apart from any question of particulars, every one of the motions that have been filed so far relate to matters which can equally well be raised at the appropriate time in the trial; and, in fact, many of them involve disputed assertions of fact which could be far more conveniently dealt with at the appropriate time in the trial.

THE PRESIDENT: Yes.

CAPTAIN KLEIMAN: Sir, at this time I request an amendment to the motion that we filed. We, too, had been laboring under difficulties --

MR. COMYNS CARR: I appreciate that.

CAPTAIN KLEIMAN: (Continuing) and the motion was drawn in a rush so that it could be mimeographed on Saturday.

We ask that with respect to all the numbers listed -- every paragraph in the motion -- there be added the following:

MR. JUSTICE MANSFIELD: At the end?

CAPTAIN KLEIMAN: At the end: "What specific rule or rules of law were violated." That is all.

THE PRESIDENT: There is no objection to that, I take it? I will allow the amendment.

MR. JUSTICE MANSFIELD: Might I make a suggestion that all motions put to the Court be numbered? They have not been numbered. There might be some confusion.

THE PRESIDENT: We discussed that this morning, Mr. Justice Mansfield. I understand that in the future they will be numbered.

MR. COMYNS CARR: May we number those we have had up to now?

THE PRESIDENT: We have a new Clerk of the Court who discussed that matter with me this morning. Have they been numbered after that?

COLONEL WALBRIDGE: We have numbered them as they came in.

MR. COMYNS CARR: Were the numbers in the order in which they have been argued up to the present time?

COLONEL WALBRIDGE: Yes.

MR. COMYNS CARR: Mr. KIIYOSE's is No. 1, then. No. 2 is the one relating to KOBAYASHI.

MR. TAVENNER: Will the numbering be done by the Secretary of the Tribunal?

THE PRESIDENT: It will be done by the Clerk of the Court as he receives the papers and as he enters them in the docket book.

MR. COMYNS CARR: No. 2 is the one on behalf of -- the second one dealing with jurisdiction; is that right? That was No. 2. And 3 was the one dealing with the Geneva Convention, in the order in which they were argued.

COLONEL WALBRIDGE: Yes.

MR. COMYNS CARR: So this bill of particulars is No. 4.

THE PRESIDENT: Are the new parties prepared to go ahead this afternoon --

CAPTAIN COLEMAN: Yes.

THE PRESIDENT: (Continuing) the new defendants, new parties to the motion?

CAPTAIN KLEIMAN: Yes. We prepared all motions together, sir. All American counsel have been involved in all the motions presented so far.

THE PRESIDENT: I will hear your application this afternoon.

CAPTAIN KLEIMAN: All right, sir.

MR. COMYNS CARR: Are they in position to tell us this is the final application for a bill of particulars? I am going to ask they do not deal with it until they are prepared to do that.

THE PRESIDENT: How soon will you be ready?

CAPTAIN COLEMAN: You said the 25th is the date.

THE PRESIDENT: I do not propose to adjourn more than a matter of a couple days. I do not think we should adjourn more than a couple days. I suggest we make it Friday -- deal with the application Friday. You want to wait for further American counsel to come. That involves a delay of about nine or ten days, does it not, which is rather too much. It is too close to the time of taking the evidence.

BRIGADIER NOLAN: You see, the difficulty, sir, of arguing it in two or three days' time is that we will be confronted with other motions for particulars at some time prior to the 25th, which is the last day for filing of the motions, and that would necessitate two arguments, as it were, on our part in answer to two separate motions when it should all be done at once.

THE PRESIDENT: Well, I am assuming Captain Coleman is in control, seeing he represents all accused; and, if he tells me an earlier date will be sufficient, I

am inclined to fix it.

MR. JUSTICE MANSFIELD: If all American counsel will be here on Monday, it should be able to be argued on Wednesday -- I mean, this motion.

MR. COMYNS CARR: Perhaps I might make this remark: Quite frankly, we were hoping that this meeting in chambers might develop in the manner which has been previously suggested, namely, a pre-trial conference --

MR. YAMAOKA: Yes.

MR. COMYNS CARR: (Continuing) at which we could deal with the whole question of how far we can mutually help one another, with propriety, in the interests of our respective clients, rather on the basis of give and take than on the basis of strict argument of motions.

THE PRESIDENT: It is rather unusual in criminal proceedings, where you are at arm's length.

MR. COMYNS CARR: Still, on the other hand, I am sure neither side wants these proceedings to be more protracted than they necessarily are bound to be, and we have a feeling that delays might be avoided by certain arrangements being arrived at between us, with the approval of the Court and with the assistance of the Court, without prejudicing the interests of any of the parties.

If that could be done, of course, it might never be necessary that this motion should be argued as a

motion. It might be that arrangements could be arrived at for saving the time of the Court, which would render that unnecessary. On the other hand, we do want to be perfectly certain that if any such arrangements are entered into, they will be arrangements which are binding upon all the defendants and which cannot be subsequently upset by someone coming in with a new motion on something or other.

CAPTAIN FURNESS: Is all you are dealing with now motions for bill of particulars?

MR. COMYNS CARR: It might extend to other matters if the suggestion I am throwing out now were adopted. But we should not be prepared to enter into any such discussion until we are sure that it is agreeable to everybody -- both American and Japanese counsel for the defense -- and that nobody will subsequently make any attempt to reopen any matter involved in any such arrangement.

CAPTAIN FURNESS: I thought, though, that a definite date of a week from Friday had already been set for that.

MR. COMYNS CARR: That is for formal motions. If there is to be any kind of informal arrangement, it will, of course, have to be on the basis that there would, in fact, be no more formal motions or, at all events, we would be apprised in advance of filing what was to be

expected in such a motion.

CAPTAIN COLEMAN: Could we not undertake to handle the matter of the bill of particulars in the manner indicated, leaving the date of the 25th open for the filing of any other --

MR. COMYNS CARR: Other kind of motion. That would be a possibility.

CAPTAIN COLEMAN: Meanwhile, this committee of the American counsel who have signed the motion and the Japanese counsel would join with them.

MR. COMYNS CARR: We would desire the assistance of the Court in any such matter. For instance, of course the Court has certain powers under the Charter as to taking judicial notice of certain matters. Those are not very precisely defined, and it would help us very much to know what matters in the opinion of the Court come within that category and what matters do not.

THE PRESIDENT: Is the term "judicial notice" used in the Charter?

MR. COMYNS CARR: Something very like that.

MAJOR BLAKENEY: Judicial notice, yes.

MR. COMYNS CARR: "Judicial Notice," under Article 13d: "The Tribunal shall neither require proof of facts of common knowledge, nor of the authenticity of official government documents and reports of any nation

nor of the proceedings, records, and findings of military or other agencies of any of the United Nations."

"Well, the last two categories are fairly clearly defined. But what is a matter of "common knowledge" is a matter on which it is difficult to say in advance what view the Court might form, and we thought it would probably help both parties if each party would come in with a list of what is suggested to be such matters, and the Court would tell us whether they would so regard them or not, in advance of the trial, which would save a great deal of time at the trial if that could be done.

THE PRESIDENT: That is done in Germany, is it not?

MR. COMYNS CARR: I believe they have done something of that kind. I am not sure. But certainly this Charter provides for it, and we thought that was one of the matters which might well be taken up, either formally or informally, either as part of suggested mutual arrangement or as an order of the Court.

THE PRESIDENT: My colleagues have authorized me in their behalf -- so far as they may do so, so far as they may delegate their responsibilities -- to try this out to see whether anything could be done in this way. I understand it is called "pre-trial" in America.

MR. COMYNS CARR: Yes, I believe so.

MR. JUSTICE MANSFIELD: In civil matters.

MR. COMYNS CARR: That is true in anything outside criminal practice in, I think, most if not all countries. But this Tribunal has a very special matter to deal with and is not bound by any rules of procedure other than those in the Charter and those which it chooses to make for itself. Under those circumstances, due to shortening the time of the trial, it would be very helpful if we did get in advance from the Court, with or without agreement between the parties, a definite list, at all events, of certain things which would be treated as matters of common knowledge. Something might crop up afterwards about which we would in the course of the trial invite the Court to add to that list. But matters which are most unlikely to be in dispute, but which would take considerable time to prove by any of the matters of evidence contemplated by the Charter, might be included in such a list in advance and thus save time.

THE PRESIDENT: Yes. I understood it was to extend also to admission of fact as well as documents.

MR. COMYNS CARR: That is, again, outside of ordinary legal procedure as most countries understand it, but clearly definite in the Charter. The only thing not

clear is the "facts of common knowledge," and we thought it would be helpful for the Court to inform the parties in advance what matters you consider in that category.

We shall be prepared in a day or two to present you with a list of matters which we consider as coming within that category; and, if the defense have any such matters which they would like to add to the list and present a similar list to you, you could then approve or alter the list, and we should all know in advance what matters would be treated in that way, as to which we should be absolved from the necessity of getting formal evidence.

I feel that if, in the course of the kind of informal discussion which I am suggesting, we were to inform the defense counsel of the manner and the scheme under which we propose to present our case, they would find that they would learn, in ample time, many of the things which they are asking for in their bill of particulars, and avoid -- even assuming that they were entitled to them as particulars, which I do not pretend for a moment -- the practice of having them all written out and handled in the shape of a formal bill of particulars. We think that our proposed method of presenting our case will give them ample notice of everything they could possibly want to know and a great deal

more than they would get in any bill of particulars.

THE PRESIDENT: You say, in asking me to accept certain documents or facts established, you may discover some of your material which would obviate the need for a bill of particulars.

MR. COMYNS CARR: Yes. Also, when they understand how we intend to put our case before the Court, which we should be quite prepared to explain to them, they will realize they will learn more in that way, and in ample time, than they could if some particular order were made to them in the bill of particulars.

THE PRESIDENT: On your side, you anticipate discovering documents to them as a sort of discovery. But, of course, they could not be expected to do likewise.

MR. COMYNS CARR: Yes, sir. Well, I should not like to say now what might result from any such discussion because I would not wish you, sir, to think we are in any way admitting that as particulars they are entitled to anything of what they are asking. If this application goes on, we shall have to resist it in toto. But, on the other hand, we might be prepared -- we shall, in fact, in our method of presentation of the case, give them, in ample time for them to prepare their answer, a great deal more information than they can

possibly get in a bill of particulars, however successful they might be in their application.

Also, we wish to make it possible for them to present their case properly. We fully realize their difficulties as well as our own, many of which, on our side, are of a technical nature, merely in the preparation and translation. It might be that we could arrive at something which would help both parties and at the same time shorten the proceedings when they actually come before the Court. On the translation side, for instance, the proceedings which have taken place already have, I think, made it apparent to everybody how difficult a problem that is, and it might be possible to arrive at some arrangement which would ease that problem.

THE PRESIDENT: Well, I do not want to make the slightest suggestion to the defense as to what they should do in such a matter. But are you prepared to make any statement today, Captain Coleman?

CAPTAIN COLEMAN: I think the suggestion just made, if followed out, might overcome many of our differences.

MR. JUSTICE MANSFIELD: I suggest it be held until all motions are filed.

THE PRESIDENT: Until the 25th of May?

MR. JUSTICE MANSFIELD: Until the 25th of May, yes. Then you will know what they are asking for. When you know, there may be quite a lot that we can give them.

CAPTAIN KLEIMAN: Sir, the only difficulty that we have -- we feel quite confident that, if we were permitted to go over the Indictment and the counts from the defense viewpoint of each defendant, we could convince the oncoming American counsel that their particular future client has been protected by this motion for bill of particulars to be made on Monday.

The difficulty we have is this: We have got to go out to these clients and, based upon the accusation against him contained in this Indictment, find out what is his story. But we American counsel do not know specifically with what crime our respective clients are charged, and without a bill of particulars it will be very difficult for us to secure this story so that we can properly cross examine and properly conduct the defense of our particular case.

We wish in every manner possible to cooperate with the prosecution and with the Tribunal, sir.

MR. COMYNS CARR: I must not be taken as admitting the need of that; on the contrary, our view is, in the Indictment as drawn we have given them a great deal more information than we were bound to do. We did

so deliberately. But I may say that I, personally, have been somewhat criticized on my own side in relation to the volume of information which has been included in the Indictment. And either this is dealt with as a motion for particulars, fought out, or it is not. I am only throwing out the view that by another method the defendants might very well get more help in this matter than they will by pressing their application for a bill of particulars.

What we want to get quite clear, in the first place, is that we shall not then be faced with some or all of the defendants saying that they are not bound by any arrangement which might be arrived at and then by further motions in the nature of bills of particulars being filed after that.

MR. JUSTICE MANSFIELD: Or any motions.

MR. COMYNS CARR: Any motions, yes.

One method possible of meeting the point, sir, is that, although I am not challenging the date you have named as being a proper date if it is left without arrangement, nevertheless, if there is to be an attempt to arrive at an arrangement, the date for filing motions might be shortened still further so that all motions might come in, and we could start trying to smooth out these difficulties at an earlier date. It would be

obviously impossible, as Judge Mansfield suggested, to make any such attempt until we know that a closed season for motions has arrived.

CAPTAIN FURNESS: I, for one, cannot understand just what you expect to give us. Until I can understand it, I cannot see how anybody can say whether it is enough or not.

BRIGADIER NOLAN: If we know what is being asked by all the defendants and know what is before the prosecution, then we would be in a better position to discuss this, once and for all.

CAPTAIN FURNESS: But you are asking now whether we will press for this bill of particulars or not. I cannot see how we will say whether we will or not until we know what you will give us.

MR. JUSTICE MANSFIELD: That is what we are pointing out. We suggest, when all the motions are in, the discussion should take place. After we know what you are asking for, then the discussion can take place. If they are not acceptable to both parties, the motions will have to be fought out; that is all.

CAPTAIN FURNESS: If we were given until Friday to say whether we ask for more particulars or not, can you tell us then what you will give us so we will know whether we should press the motion or --

MR. JUSTICE MANSFIELD: This coming Friday?

CAPTAIN FURNESS: Yes, this coming Friday.
I thought that was the date set.

MR. COMYNS CARR: No, it is the following Friday that the date has been set. But it is obvious, if we are trying to dispose of it in what I suggest might be a more helpful manner, the first stage would be that by agreement we should ask the Court to shorten that period. Then we could get down to discussing the matter, and if the discussions failed, the motions could then be fought.

MR. JUSTICE MANSFIELD: The whole point is that before we can offer anything, we want to know what they want. We are not prepared to offer something now and then afterwards have them come along with more motions.

THE PRESIDENT: Have they not indicated in this motion what they want?

MR. COMYNS CARR: Yes. But at the moment, we haven't any, as far as I understand it, binding assurance that this is the only motion there is going to be, because it is said that other American counsel are coming and an opportunity must be reserved for them to file more motions.

MR. JUSTICE MANSFIELD: Obviously this can't be the only motion. There are motions of all sorts that

will be made. But until we know what motions will be made to gain particulars or to do anything else, then we cannot offer them anything. If we do that, after we have given them what they want to know they may come for more.

THE PRESIDENT: I have fixed a date for the preliminary motions. It is the 25th of May.

The next thing is whether we should go on today with this application or adjourn it.

MR. JUSTICE MANSFIELD: I suggest this be adjourned until that day.

THE PRESIDENT: I think the American counsel still to come will need at least that time. In fact, I do not think they will be able to do much in that time.

MR. YAMAOKA: Yes.

MR. JUSTICE MANSFIELD: The following Monday might be a better time.

THE PRESIDENT: That is coming very close to the day of the trial.

MR. JUSTICE MANSFIELD: A week before the trial.

THE PRESIDENT: Captain Kleiman wants to know what he is to meet as soon as he can. That is his attitude today. If he has to wait until Monday a week, he will have to wait a long time.

MR. COMYNS CARR: I suggest, then, this: All the defendants are at the present time represented by somebody, as I understand it, apart from the fact that Captain Coleman in a sense represents them all. Each of them is represented by Japanese counsel and some, also, by American counsel. It is very unfortunate other American counsel are not here yet. But I would suggest that amongst those counsel, both Japanese and American, who are here there is representation of every defendant; and if they choose to give a definite understanding, shortening the period which you have fixed, that they will not after some earlier date file any more motions; that there will not be any motions that are binding upon their clients; and, if other American counsel arrive later, they will have to accept that position. Then we could begin at an earlier date seeing whether we can arrive at any mutual arrangement; and, if we cannot, the motions could be heard.

But to expect that any order made on a bill of particulars to be argued after Friday of next week could be complied with in time for June 3 is, I am afraid, asking for the impossible, at all events, certainly to be of any use to counsel before the 3d of June.

MR. JUSTICE MANSFIELD: That is a matter for them.

MR. COMYNS CARR: It is a matter for them entirely, yes.

Formally, I ask that the hearing of this motion be adjourned until after Friday a week, when we shall know whether there are any more.

If anything is to be done in the meantime, it is a matter for defense counsel to approach us. They know what we are prepared to discuss. Naturally, I am not prepared to say what we are prepared to offer until I know whether the matter is going to be disposed of in that way, or an attempt going to be made to dispose of it in that way. But I must object to proceeding this afternoon with the bill of particulars when we do not know that that is the final application.

MR. JUSTICE MANSFIELD: The point about it is that before we can discuss with them what we are prepared to give them, we must know what they want from these motions. Further, we cannot make an offer to them before the motions are in, and they must bind all of them.

BRIGADIER NOLAN: And the sooner the motions are lodged with the Court, the sooner we can discuss it. So it is for the defense counsel to hurry these proceedings along to get what they ask for.

THE PRESIDENT: I am wondering if any information they give you will be fuller than that appearing in

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THE PRESIDENT: I am wondering if any information they give you will be fuller than that appearing in

the notice of motion.

MR. COMYNS CARR: Except we shall know what is there and that there shall be nothing else asked for.

MR. JUSTICE MANSFIELD: I suppose there will be other motions, not necessarily for this, but anything else, and it may lessen the amount that we are going to offer them, or increase it.

THE PRESIDENT: I cannot see that there would be any other than the mentioned motions for severance or motions for particulars. What others would there be?

MR. JUSTICE MANSFIELD: Oh, I think I can think of some more.

CAPTAIN FURNESS: Can we agree this will be the last motion for particulars, or agree no further motions will be filed at a certain date sooner, and leave the other motions to a week from Friday?

MR. JUSTICE MANSFIELD: Our point is we are not prepared to discuss this with them until we know what all their motions are. When we know what they want, what their objections are, and so forth, then we will be prepared to discuss the matter with them and settle them all.

BRIGADIER NOLAN: Or argue them.

CAPTAIN KLEIMAN: Is there any information, sir, that the American counsel can get from you now?

What we are attempting to do, what we tried to do in making these motions on behalf of the five defendants, was to expedite the trial. We want to be ready on June 3 if we can possibly be ready on June 3. Now, if we can visit your office and you can furnish us some particulars without prejudicing your case, why, we may be able to agree with you.

MR. JUSTICE MANSFIELD: Well, if you put it in more specific language, what you require, we will be able to consider that then.

CAPTAIN KLEIMAN: Then, instead of bothering the Tribunal, how about this committee's meeting with a committee from the prosecution?

MR. JUSTICE MANSFIELD: That is a good idea.

CAPTAIN KLEIMAN: And we can go over what we want and I am quite sure then we will be able to convince the other American counsel. And if we cannot agree, we will continue with the motion.

BRIGADIER NOLAN: And not until all the counsel are here.

MR. JUSTICE MANSFIELD: Yes.

MR. YAMAOKA: That seems to be a condition which must be met. All the American counsel should be here. Then we put eyes together and agree on a certain definite procedure. But I do not see how we could very

well agree today to bind the others who have not had a chance to study this,

MR. TAVENNER: If the date were set up to Wednesday of next week instead of Friday, or even Tuesday, wouldn't that be a good compromise on that time?

MR. YAMAOKA: Captain Coleman stated they probably would not all arrive until -- Monday, did you say, Captain?

CAPTAIN COLEMAN: Monday would be the earliest, I think, that we could possibly hope to have them in the office, to be in position even to be in to look at the thing.

MR. COMYNS CARR: Yes. We all have had the experience of arrival dates in Tokyo to be disappointing.

I personally feel, if anything is to be done, those who are here must take the responsibility. It is not as though there was any defendant who was not represented by counsel of one nationality or another.

MR. JUSTICE MANSFIELD: The point about it is that if we can say that all the motions that are likely to be put before the Court in respect to the Indictment or in respect to preliminary applications will all be filed by next Wednesday, then we can have that meeting on Wednesday, or as soon as they can be filed, and discuss everything.

CAPTAIN FURNESS: On the motion to sever, of course we cannot make it until we get some of the particulars for which we ask.

MR. JUSTICE MANSFIELD: I am not quite familiar with your motion for severance.

MR. COMYNS CARR: You mean separate trial?

CAPTAIN KLEIMAN: Separate trial with some of the defendants, because trial with the rest of the defendants would prejudice their case.

MR. COMYNS CARR: I understand that.

MR. JUSTICE MANSFIELD: Yes. I did not know exactly what you meant by that.

THE PRESIDENT: I think I can safely fix it. I will leave that date stand, May 25, for the filing of all preliminary notices of motion, and I will adjourn this matter until the same date to enable the parties to confer.

(Whereupon, at 1515, an adjournment was taken until 25 May 1946.)

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